

SUSAN BETTLES

IBLA 81! 318

Decided November 19, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring Sue Nos. 1 through 6 lode mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Where the mining claimant files timely a notice of location in the wrong BLM state office, the claim is deemed abandoned and void even though the document was not returned in time to correct the error.

APPEARANCES: Susan Bettles, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On July 9, 1980, Susan Bettles located the Sue Nos. 1 through 6 lode mining claims in the La Sal Mining District of Utah. She recorded the claims with San Juan County, Utah, on July 17, 1980, and with the Colorado State Office of the Bureau of Land Management (BLM)

on August 21, 1980. On December 16, 1980, the Colorado State Office returned her documents as unacceptable because the documents for claims located in Utah must be filed with the Utah State Office, BLM.

On January 9, 1981, the Utah State Office, BLM, issued a decision rejecting her filing for recordation and finding the claims abandoned and void. The decision stated:

The regulations in 43 CFR 3833.1-2(b) require that a copy of the official record of the notice or certificate of location for unpatented mining claims, mill sites, or tunnel sites must be filed within 90 days after the date of location in the proper BLM office. Further, regulation 43 CFR 3833.4(a) provides that the failure to file within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

Since you failed to file the notices of location for the Sue Nos. 1-6 lode mining claims within the 90 day period, compliance with the law and the regulations was not made. Accordingly, the Sue Nos. 1-6 mining claims are hereby declared abandoned and void, and the instruments are returned herewith.

For your protection, you may wish to relocate the subject mining claims and file a copy of the official record of the notice or certificate of location of the claims within 90 days after the date of location, providing that there are no intervening third party rights.

On appeal to the Board, the appellant argues primarily that she filed the necessary documents within the 90-day period, albeit at the incorrect BLM office. The Colorado State Office then held the documents for months, thus precluding proper filing.

[1, 2] Section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file within 90 days of location a copy of the notice of location in the BLM office designated by the Secretary of the Interior. Section 314(c) provides that failure to file timely such records shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. The implementing regulation, 43 CFR 3833.1-2(b), outlines these statutory requirements.

The proper BLM office is the BLM office with jurisdiction over the area in which the claim is located. 43 CFR 1821.2-1(d). In this case, because the claims are located in Utah, the Utah State Office has jurisdiction.

Appellant did not file the required documents with the proper BLM office within the statutory time. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744; 43 CFR 3833.1-2(a). Interstate Brick, 49 IBLA 125 (1980); Santa Fe Nuclear, Inc., 47 IBLA 220 (1980); C. F. Linn, 45 IBLA 156 (1980).

It is, indeed, unfortunate that the Colorado State Office failed to return appellant's filings in a more expeditious manner. In Richard L. Rosenthal, 45 IBLA 146 (1980), this Board reinstated an oil and gas lease based on the failure of the Colorado State Office to forward a rental payment to the Montana State Office or return it to the lessee, "with reasonable dispatch." Id. at 148. The delay herein is far more egregious. Unlike the situation which exists in oil and gas lease reinstatements, however, this Board has no authority to waive or excuse late filings. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Thus, regardless of the additional delay engendered by this failure of the State Office to return the documents, the claims must be deemed abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

